IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 9-10-2007

Coram

The Honourable Mr.Justice S.J.MUKHOPADHAYA
and
The Honourable Mr.Justice N.PAUL VASANTHAKUMAR

W.A.No.3197 of 2003
W.A.M.P.No.5097 of 2003

N. Gopal ... Appellant/ Petitioner

Vs.

1. General Insurance Corporation of India,
rep.by its Chairman,
Industrial Assurance Building,
Churchgate,
Bombay - 400 020.

2. The Oriental Insurance Company Limited,
rep.by its Asst. General Manager,
U.I.L.Building, IV Floor,
P.B.No.1877, 8, Esplanade,
Chennai - 600 108. ... Respondents/ Respondents

This Writ Appeal has been filed under Clause 15 of Letters Patent against the order of the learned single Judge in W.P.No.4304 of 1995 dated 12.8.2003 presented under Art 226 of the Constitution of India to issue writ of directing the respondents to count the petitioners part service from the year 1962 for all purposes including pension and age of retirement and the benefits thereon.

For Appellant : Mr.N.G.R.Prasad
for Row & Reddy

For Respondents : Mr.P.Sukumaran

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J U D G M E N T

N. PAUL VASANTHAKUMAR, J.

This writ appeal is directed against the order passed by the learned single Judge in W.P.No.4304 of 1995 dated 12.8.2003, dismissing the writ petition filed by the appellant herein.

2. The brief facts necessary for disposal of this writ appeal are that the appellant claims to have been appointed in the second respondent Insurance Company from 1.10.1962, which was originally a subsidiary to Life Insurance Corporation of India prior to nationalisation. The appellant was given charge of the Airport Counter to cover Air passengers' risk throughout day and night, for all days. The appellant adjusted the working time along with another person in the Counter. According to the appellant, he was given the order of appointment only on 5.2.1964 on contract basis with a salary of Rs.175/- per month. The appellant continued in the said category of work for nearly 23 years and he raised a dispute through the Union for regularisation, which was declined. On 16.8.1985, the appellant was given appointment as Assistant in the regular scale of pay by the second respondent. The appellant was given the benefit of five advance increments. However, the benefit of the earlier period of service from 1962 were not given. In the appointment order given on 29.7.1986, the appellant was treated as fresh appointee and due to the said appointment order given with effect from 29.7.1986, the appellant had to retire at the age of 58, whereas the persons joined in the second respondent Company before 21.9.1984 were given the benefit of age of retirement of 60 years. The appellant completed 58 years as on 30.4.1998 and retired and he was given half pension, because he had completed only 12 years of service. The earlier service from 1962 having not been counted for the purpose of retirement benefits, he filed W.P.No.4304 of 1995 praying for issuing writ of mandamus directing the respondents to count his past services from the year 1962 for all purposes, including pension and age of retirement and benefits thereon.

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3. The second respondent filed counter affidavit stating that the Company from the very beginning was manning the Insurance Counter at the Airports all over India, selling personal accident policies for Air passengers by engaging independent contractors and the said arrangements continued even after nationalisation with effect from 1.1.1973. On 1.10.1962, the appellant was given a letter offering only specific contract for issuing personal accident coupons on behalf of the Company at Meenambakkam Airport,

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Chennai, on certain terms and conditions. According to the said letter, the appellant may appoint staff or authorised representatives for the purpose of issuing aviation coupons of the Company and the appellant would be ultimately responsible to ensure that the Counter/Premises are well maintained and the premium collected are accounted properly and the unused coupons along with other numbered documents are properly maintained and accounted, without being misused. Even though there was a settlement in the year 1968 between All India Insurance Employees Association and All India Federation of Oriental and Fire General Insurance Employees' Association, Bombay, with regard to wage and terms and conditions of service, the same was not applicable to the appellant as his engagement was purely on contract basis with a consolidated commission.

4. The dispute raised by the appellant before the Labour Commissioner was referred to the Central Government for consideration and after consideration, the Central Government declined to refer the dispute for adjudication. The appellant's contention that issuing of Air coupons be treated as full time clerical job cannot be accepted. The appellant was shown mercy and on humanitarian grounds, he was offered the post of Assistant (Clerical) in Oriental Insurance Company as a new entrant and he accepted the same without any demur. From 1962 to 29.7.1986, the appellant never contributed any provident fund and was not enjoying any leave benefits as his engagement was on contract basis. The appellant's claim for promotion to the cadre of Senior Assistant considering his earlier appointment from 1962 was rejected on the ground that he was not having required number of years of service in the cadre of Assistant. The said order was also accepted by the appellant and he having been appointed after the General Insurance (Nationalisation and Revision of Pay Scales and Other Conditions of Service of Supervisory Clerical and Supporting Staff) Amendment Scheme, 1984, fixing the age of retirement as 58 years, the appellant is bound to retire on attaining the age of 58 years.

5. A reply affidavit was filed by the appellant for the said counter affidavit.

6. The learned single Judge considered the claim of the appellant made in the writ petition and found that there was no merit in the contention of the appellant and dismissed the writ petition by holding that the period prior to 1986 cannot be considered as service put in by the appellant and he was engaged on contract basis and remuneration was paid only for the services rendered by him. The said writ petition was dismissed along with the connected writ petitions by order dated 12.8.2003. As against the said order, the present writ appeal is preferred.

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7. The learned counsel appearing for the appellant argued that when the appellant was given regular appointment on 29.7.1986 with the benefit of five increments, it goes without saying that the second respondent recognised his past services and even if the appellant is not entitled to get any arrears of salary, at least the period from 1962 to 29.7.1986 shall be counted for the purpose of pension. The learned counsel also submitted that he was appointed exclusively to look after the Airport Counter and therefore he should be treated as Clerk of the second respondent Insurance Company.

8. We have also heard the learned counsel appearing for the respondents. After hearing the learned counsel for the respondents, on 13.9.2007, we raised the following interrogatories to be answered by the second respondent:

> "(a) What was the mode of collection of personal accident (aviation) insurance amount during the period 1962-1986 during which the company used to collect the insurance amount.
> (b) What is the mode, at present, the company follows to collect such personal accident (aviation) insurance amount, and;
> (c) Whether the company intends to reconsider the question of counting the period of service rendered by the appellant personally and not through any other person to the company during the period 1962-1986."

9. For the above queries raised by us, the second respondent filed an affidavit stating that during the period from 1962 to 1986, the insurance premium amount was collected for personal accident (aviation) by issuing coupons at the Airport Counter by engaging persons on contractual basis and even now the said procedure is followed by engaging persons on contract basis at Chennai Airport Counter both at national and international terminals. The Airport Authority of India, used to call for tenders to issue licence for operation of Insurance Counter at the Airport terminals for stipulated period on specific terms and conditions and the Nationalised Insurance Companies and private Insurance Companies, approved by the Insurance Regulatory and Development Authority are permitted to participate in the tender. The appellant was permitted to provide adequate staff for the purpose of issuing coupons at the Airport Counter during the time of the contract. It is further stated that at the time of appointment in the year 1986, the basic pay was fixed with five advanced increments and was appointed to the post of Assistant (Clerical) by appointment letter dated 29.7.1986 with usual terms and conditions of employment and the appointment having been accepted, it is not open to the appellant to contend to the contra. Contribution to provident fund and pension fund commenced

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only after his appointment from 1986 and therefore the prayer to consider the period of work done on contract basis cannot be considered as qualifying service for the purpose of computing pension or any other relief.

10. In the light of the above factual aspects, we have to ascertain as to whether the period prior to the appointment of the appellant herein as Assistant i.e., 29.7.1986 can be treated as service period for the purpose of pension.

11. From the perusal of the letter issued by the second respondent dated 5.2.1964, we could see that the appellant was offered contract for issuing personal accident (aviation coupons) on behalf of the Company at Meenambakkam Airport and he was authorised to use the counter allotted by the Airport Authorities and he was given responsibility to provide adequate staff for the purpose of issuing coupons. Remuneration for the services rendered was fixed at Rs.175/- per month in terms of contract and the said arrangement was given effect to from 1.1.1964 until the contract was terminated by either party, giving one month notice in writing. The appellant also accepted the said contract and he is bound by the clauses contained therein. The remuneration was subsequently enhanced to Rs.250/- per month from 1.9.1969; Rs.400/- per month from 1.1.1974; Rs.500/- per month in March, 1982; and Rs.600/- per month from 1.1.1984, and the appellant continued as Company's authorised representative for issuing Aviation Coupons at Company's counter at the Airport. Engaging contractors in the Airports by the Airport Authorities is in vogue even today.

12. We have also perused the order of appointment given to the appellant on 29.7.1986. In the said order of appointment it is clearly stated that the appellant will be on probation for six months, which may be extended at the discretion of the management and he will be eligible for confirmation of satisfactory completion of his probation period and therefore he has no claim whatsoever for the past engagement as contractor. His request for promotion to the cadre of Senior Assistant was also turned down on 29.7.1987 as he has not completed the required years of service as Assistant i.e., in the lower cadre. The said order also has become final. The Department of Revenue and Insurance, Ministry of Finance, Government of India, in its letter dated 8th June, 1972 considered the request of the appellant, rejected the plea of referring the matter of absorption to the Industrial Tribunal by accepting the stand of the second respondent that the the appellant has been working as per the contract, which has been entered into with the company. The appellant also accepted the said order of the Government of India. Hence the contention of

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the appellant that at least for the purpose of pension, the earlier period of his services has to be counted, cannot be countenanced.

13. The learned single Judge found that the period of service put in by the appellant by virtue of contract cannot be counted to bring him within the definition of 'qualifying service'. We see no reason to differ with the said finding on the facts.

14. There is no merit in the writ appeal and the same is dismissed. The order of the learned single Judge in W.P.No.4304 of 1995 dated 12.8.2003 is confirmed. There is no order as to costs. Connected miscellaneous petition is also dismissed.

Sd/-
Asst. Registrar.

/true copy/

Sub Asst. Registrar.

vr

1 cc to M/s. Row and Reddy, Advocate, Sr. 62240
1 cc to Mr.P. Sukumaran, Advocate, sr. 62405

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